

The State of New Hampshire

opinion

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*orig. material
in 54.8*

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Concord

April 10, 1974

Mr. Roy Y. Lang, Director
Personnel Department
State House Annex
Concord, New Hampshire 03301

Dear Mr. Lang:

By letter to us today you have called our attention to the "Statement By Conference Committee On HB 11" set out on page 397 of the Journal of the House for April 2, 1974, and on page 533 of the Journal of the Senate for the same day. Among other things, House Bill 11 increased salaries of classified employees, authorized extra payments for those New Hampshire Hospital and State Prison employees engaged in hazardous duties, and authorized other extra payments for those actively engaged in care and treatment of patients and inmates of the Hospital, the Laconia State School and the Youth Development Center. Following adoption of the Conference Committee report on this bill by each house, the cited statement was placed on record and printed in the journal of each house to the effect that the Committee would have "included a two grade upward classification" for nurses at the School, Development Center and Hospital, but had chosen not to do so on the ground that such action was "more properly an administrative responsibility of the Department of Personnel." The Statement continued that "[i]t is the intention of the Conference Committee that the Personnel Department give prompt and favorable consideration to a reclassification and upgrading of the nurses. . . ." [Emphasis supplied] The practical effect of such a "reclassification and upgrading" would be a pay increase.

The statute constituting the present personnel system of this State, RSA 98, was first enacted in 1950 and has been amended over the years. That statute defines the classified state employment service to which it applies (§ 2, as amended), provides for your own position as Director (§ 9), provides for a Personnel Commission (§ 3), and gives the Commission certain duties and powers. Among these is the duty and power to establish

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a classification plan, subject to the approval of the Governor and Council (§ 8, IV) and to make rules and regulations, again subject to Governor and Council approval, to carry out the purposes of the act (§ 8, III). A classification plan dividing the classified service into 34 labor grades with ascending salary scales has been adopted by the Commission and by the Governor and Council, and Rules of the Department of Personnel have similarly been adopted and approved. As Director you have the duty under § 13, XIII to bring to the Commission's attention any changes that ought to be made to the plan, to the end as required by the statute that "... the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same classification." You then have the authority and responsibility to "allocate the position of every employee . . . to one of the classifications in the plan." Ibid. Your letter characterizes the object of making allocations of positions within the plan to be "equal pay for equal work."

Not only is the statute binding upon you, but so are the Rules of the Department adopted by the Commission and made effective by approval of the Governor and Council. It is enough here to note that Rule III, 2 governs your duty to allocate positions to the classification plan in accordance with "general duties, responsibilities, specific tasks, minimum qualifications and relationship to other classes and levels." If there are "material changes in the duties and responsibilities of the positions," appointing authorities must give notice to you as Director (Rule III, 4), so that you can review the allocation of the position in the plan and change the allocation on the basis of such material change (Rule III, 3). Similarly, an employee may inform you of such material change (Rule III, 4). You have told me that no such notice of material change in duties or responsibilities of the nurses in question has been communicated to you by appointing authority or nurse, and I understand there has been no suggestion from anyone that any such material change has taken place.

In this factual and legal background, you have posed two questions. The first question is whether the Statement of the Conference Committee authorizes you to set aside the Rules I have cited, so as to authorize a reallocation (i.e., "re-classification and upgrading") without any knowledge of change in job content (i.e., "material change in duties and responsibilities"). The answer to your question is no. We think it does not require discussion of authority to start with the premise that the statute and Rules, the validity of which no one has questioned,

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govern and limit the extent of your power unless modified by other legal authority of equal or superior force. The Statement of the Conference Committee does not have such legal force. It does not purport to be a part of the legislative history of RSA 98, as amended, and it does not occur in the course of any amendment to that statute. Nor does the Statement relate to the meaning of any positive enactment included in HB 11 (now 1974 Laws 47). So far as we know, no one doubts that the Statement correctly expresses the desire of the Committee that made it. But the Statement is neither a statute itself nor part of the history of RSA 98. It cannot supplant the clear legal force of that statute or of the Rules issued under that statute's authority. You are bound by that statute and by those Rules.

Your second question is whether the Statement would authorize you as Director to set aside the statement of policy contained in the Rules that their object is to implement RSA 98 by "[t]he establishment and maintenance of a uniform plan of classification and pay based upon the relative duties and responsibilities of positions in the state classified service." For reasons essentially the same as those expressed in answering your first question, the answer to this question is also no. In this respect we should note the advice contained in your letter that presently the nurses in question are authorized to receive "higher salaries than the average base pay prevailing rates found among the general hospitals within New Hampshire when average salaries for the vast majority of other state classified positions are less than prevailing rates." In other words, if there is any inequity at the present time on the "equal work, equal pay" criterion, it favors the nurses, and a reallocation upward would favor them even more in relation to other state employees. I understand from you that you have considered the effects of the hazardous and differential pay enactments of 1974 Laws 47. On these facts you could not legally make favorable reallocations of the classified nursing positions in question.

Sincerely,

Warren B. Rudman
Attorney General

David H. Souter
Deputy Attorney General